Supreme Court of the United States

OCTOBER TERM 1971

No. 71-913

In the Matter of the Complaint of
SEABOARD SHIPPING CORPORATION, as owner of the Barge Oil Transfer 32,
Petitioner,
for exoneration from or limitation of liability.

MORAN INLAND WATERWAYS CORPORATION and MORAN TOWING AND TRANSPORTATION CO. INC., Claimants,
Respondents.

In the Matter of the Complaint of
MORAN INLAND WATERWAYS CORPORATION, as owner, and MORAN TOWING & TRANSPORTATION CO., INC., as chartered owner of Tug Margot Moran,
Respondents,
for exoneration from or limitation of liability.

SEABOARD SHIPPING CORPORATION, Claimant,
Petitioner.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ON BEHALF OF SEABOARD SHIPPING CORPORATION

EUGENE G. LAMB,
Attorney for Petitioner,
350 Broadway,
New York, N.Y.

Of Counsel:
JUVENAL L. MARCHISIO

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Seaboard Shipping Corporation, prays for rehearing of the order denying the issuance of a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Second Circuit and the denial of a petition for a rehearing or a rehearing *in banc*, reversing a judgment entered in the United States District Court for the Southern District of New York on November 5, 1970 dismissing the complaints in both above-entitled consolidated actions and remanding the actions to the District Court for an equal division of damages paid in settlement of claims for the death of the two crewmembers of the Barge Oil Transfer 32.

The order of this Court denying the petition for a writ of certiorari dated May 22, 1972 is appended hereto (*infra*, p. 6). The opinions of the Court of Appeals and the District Court are contained as appendices in the petition for a writ of certiorari herein.

Jurisdiction

A statement as to jurisdiction to review the judgment of the Court of Appeals by writ of certiorari is contained in the petition for certiorari herein. A petition for rehearing of an order denying a petition for a writ of certiorari is invoked pursuant to Rule 58.2 of this Court.

Reasons for Granting Rehearing

Subsequent to the filing of the petition for certiorari in this action, this Court on May 15, 1972 decided the case of *Atlantic Coast Line RR Co.* v. *Erie Lackawanna RR Co., Docket* #71-107, which decision is of substantial and

controlling effect on the question presented in Seaboard's petition for certiorari herein as to whether contribution shall be allowed in maritime personal injury non-collision cases.

Statement of the Case

One of the main issues raised in Seaboard's petition for writ of certiorari was the question of whether contribution may be allowed in maritime personal injury non-collision cases under the rule of *Halcyon Lines* v. *Haenn Ship C & R Corp.*, 342 U.S. 282. The Court of Appeals for the Second Circuit, contrary to Halcyon, had permitted contribution in Seaboard's case and reversed the District Court remanding the actions for an equal division of damages paid in settlement of claims for the death of the two crew-members of the Seaboard Barge Oil Transfer 32 lost in a storm on Lake Michigan while the Barge was in tow of a Moran Inland Waterways tugboat.

Thereafter, on May 15, 1972, this Court held 8 to 0 in the case of *Atlantic Coast Line RR Co.* v. *Erie Lackawanna RR Co.*, that the rule of *Halcyon* continued to be the law of the land in that contribution would not be permitted in maritime personal injury non-collision cases (copy of the opinion in *Atlantic Coast Line RR Co.* v. *Erie Lackawanna RR Co.*, *infra*, p. 7). On May 22, 1972 Seaboard's petition for a writ of certiorari was denied with Justices Brennan, White and Stewart of the opinion that certiorari should be granted.

It is respectfully submitted that this Court's clear and unanimous reaffirmation of the *Halcyon* rule in *Atlantic Coast Line RR Co.*, will be undermined if the denial of Seaboard's petition for certiorari is allowed to stand. Just as the validity and vitality of the rule enunciated in *Halcyon* was questioned during the 20 years since it was decided, so too the seeds of doubt as to the meaning of this Court's

decision in *Atlantic Coast* will be spawned if the denial of Seaboard's petition for certiorari on the same issue of contribution some seven days after the Court's decision in *Atlantic Coast* is permitted to remain. The time honored doctrine of predictability, so eloquently espoused by Mr. Justice Holmes, will also certainly suffer a setback if the Maritime Bar is unable to clearly state that contribution is not allowed in non-collision personal injury maritime matters. If this indeed was the rule that this Court intended to reaffirm in *Atlantic Coast Line RR Co.* v. *Erie Lackawanna RR Co.*, then it is submitted that that decision is of controlling effect upon Seaboard's petition for certiorari and that this Court should reconsider its denial of the petition for a writ of Certiorari, that said petition should be granted and the decision of the Court of Appeals herein be summarily reversed, and the case remanded to the United States Court of Appeals for the Second Circuit for the entry of judgment in accordance with this Court's opinion in *Atlantic Coast Line RR Co.* v. *Erie Lackawanna RR Co.*

Respectfully submitted,

EUGENE G. LAMB,
Attorney for Petitioner,
Seaboard Shipping Corporation,
350 Broadway
New York, N.Y.

Of Counsel:

JUVENAL L. MARCHISIO

Dated: New York, New York, June 9, 1972.

Certification of Counsel.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The undersigned attorney, admitted to practice before the Supreme Court of the United States, certifies that the within Petition for Re-Hearing of Order denying Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit on behalf of Seaboard Shipping Corporation is presented in good faith and not for the purpose of delay and is restricted to the ground that there exists intervening circumstances of substantial and controlling effect on Seaboard's Petition for a Writ of Certiorari.

Dated: 9th day of June, 1972.

EUGENE G. LAMB

Appendix A.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 22 1972

Edmund F. Lamb, Esq.
Purdy, Lamb & Marchisio
350 Broadway
New York, N. Y. 10013

RE: SEABOARD SHIPPING CORP. v. MORAN INLAND WATERWAYS CORP., ET AL. No. 71-913; MORAN INLAND WATERWAYS CORP., ET AL. v. SEABOARD SHIPPING CORP., No. 71-981.

Dear Sir:

The Court today entered the following order in the above-entitled cases.

The petitions for writs of certiorari are denied. Mr. Justice Brennan, Mr. Justice Stewart and Mr. Justice White are of the opinion that certiorari should be granted.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By E. T. LYDDENE
Assistant Clerk

Eugene Underwood, Esq.
Burlingham, Underwood & Lord
25 Broadway
New York, N. Y. 10004

Appendix B.

No. 71-107

Atlantic Coast Line Railroad Company, Petitioner, *v.* Erie Lackawanna Railroad Company et al.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 15, 1972].

PER CURIAM.

We granted certiorari to review the judgment of the Court of Appeals for the Second Circuit, 442 F. 2d 694 (1971), affirming the judgment of the District Court for the Southern District of New York, 315 F. Supp. 357 (1970). 404 U. S. 909 (1971). We agree that in this non-collision admiralty case the District Court properly dismissed petitioner's third-party complaint for contribution against respondent Erie on the authority of *Halcyon Lines* v. *Haenn Ship, etc., Corp.*, 342 U. S. 282 (1952). The judgment of the Court of Appeals is therefore

Affirmed.

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

DEVEREUX MILBURN, New York, N. Y. (LOUIS L. STANTON, JR., JEROME L. GETZ, CARTER, LEDYARD & MILBURN, and FRANK G. KURKA, with him on the brief) for petitioner; E. BARRETT PRETTYMAN, JR., Washington, D.C. (TIMOTHY J. BLOOMFIELD and LLOYD W. for petitioners; HARRY M. PLOTKIN, Washington, D.C. (WAYNE W. OWEN, GEORGE H. SHAPIRO, DAVID TILLOTSON, MOSES, MCCLELLAN, ARNOLD, OWEN & MCDERMOTT, and ARENT, FOX, KINTNER, PLOTKIN

& KAHN, with him on the brief) for respondent; MELVIN L. WULF, LAWRENCE G. SAGER, SCOTT ROBB, and RONALD S. REICH filed brief for American Civil Liberties Union, as amicus curiae, seeking affirmance; PAUL RODGERS filed brief for National Assn. of Regulatory Utility Comrs., as amicus curiae, seeking affirmance; WILLIAM J. SCOTT, Attorney General, State of Illinois, PETER A. FASSEAS, Special Assistant Attorney General, and ROLAND S. HOMET, JR. filed brief for State of Illinois, as amicus curiae, seeking reversal.